

Sample Juvenile Custody Policy and Procedures

For Montana Law Enforcement Departments

Date Issued:	10/1/2003
Review Date:	10/1, biennially thereafter
Last Review:	10/1/2003
Related Policies:	All other juvenile policies. OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended (September 2003)
Related Legislation:	Federal Juvenile Justice and Delinquency Prevention Act of 1974, as Amended in 2002. MCA Title 41 Chapter 3, The Child Abuse and Neglect Act MCA Title 41 Chapter 5, The Youth Court Act OJJDP Formula Grant Consolidated Regulation (28 CFR Part 31, December 1996)

Statement of Purpose:

All juveniles taken into custody by this department shall be treated in a manner which provides for: the safety of all concerned, respect for human dignity, the preservation of the legal rights and property of the individual, accurate documentation and administrative efficiency. Juveniles, those persons under the age of 18, require considerations due to State and Federal Law and Federal regulations.

Policy:

This policy addresses the secure and non-secure custody of youth under the age of 18 and, where state and federal statutes/regulations may differ, provides for compliance with the most restrictive.

Definitions:

- I. Adult Jail
An adult jail is a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility licensed by the Department of Corrections that complies with 28 CFR, part 31.
- II. Collocated Facility
A collocated facility is a juvenile facility that is located in the same building as a secure adult facility or is part of a related complex of buildings located on the same

grounds as a secure adult facility. A complex of buildings is considered related when it shares physical features such as walls and fences or services beyond mechanical services (heating, air conditioning, water, and sewer). *Absent licensing by Department of Corrections, adult facilities that are collocated with juvenile facilities are considered adult jails.*

III. Contact with incarcerated adults

The Juvenile Justice and Delinquency Prevention Act of 1974, as Amended states that neither juveniles alleged to be or found to be criminal-type offenders nor status offenders can have contact with incarcerated adults, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. *Sight contact* is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. *Sound contact* is defined as direct oral communication between incarcerated adults and juvenile offenders.

Separation must be achieved in all secure areas of the facility. It may be accomplished architecturally or through written policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and incarcerated adults in secure nonresidential areas of the facility do not count as violations.

Where a secure booking area is all that is available, continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed, fingerprinted, or take a breathalyzer test (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status and separation would not apply during this time. Once the booking process has been completed, the juvenile must be separated immediately from incarcerated adults.

IV. Non-secure Custody

A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in secure detention or confinement status. *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups*¹ states that all of the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:

1. The area where the juvenile is placed is an unlocked, multi-purpose location, such as a lobby, office, or an interview room, which is not designated, set aside, or used as a secure area (i.e., It is not part of a larger locked perimeter, does not have any lock on the door that cannot be opened from the inside, or have delayed egress devices that have not received written approval by the local authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is

¹ *Federal Register* 53, no. 212 (November 2, 1988): 44367 (see appendix)

located and the maximum delay does not exceed 30 seconds.²) or is not part of such an area, if a secure area, is used only for processing purposes;

2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
3. The use of the area is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
4. In no event can the area be designed or intended to be used for residential purposes; and
5. The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

In addition, a juvenile placed in the following situations would be considered in a non-secure status:

- *A juvenile handcuffed to a non-stationary object:* If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered non-secure.
- *A juvenile being processed through a secure booking area:* Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed, fingerprinted, or to take a breathalyzer test (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure custody status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
- *A juvenile placed in a secure police car for transportation:* The JJDP Act applies to secure detention and secure correctional facilities; therefore, a juvenile placed in a police car for transportation would be in a non-secure status. (Sight and sound separation requirements do not apply.)
- *A juvenile placed in a non-secure runaway shelter but prevented from leaving because of staff restricting access to exits:* A facility may be non-secure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.

² An unlocked multipurpose area need not be considered part of a secure detention area when, at no time when the juvenile is in such an area, is there sight or sound contact with incarcerated adults.

- *A juvenile placed in a room that contains doors with delayed egress devices:* If the devices do not exceed a maximum delay of 30 seconds and they have been given *written* approval, including a specification of the maximum time delay allowed, by the authority having jurisdiction over local fire codes and fire inspections the juvenile is considered to be in non-secure custody.

V. Secure Custody

As used to define a detention or correctional facility, this term includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., locked rooms and buildings, fences, or other physical structures.) It does not include facilities where physical restriction of movement or activity is provided *solely* through facility staff.

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups states that a secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside, or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

Also considered secure are those facilities that contain doors with delayed egress devices that have not received *written* approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. *Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay*³.

As examples, a juvenile placed in the following situations would be considered to be in a secure custody status:

- A juvenile placed in a cell within a jail, *whether or not the cell door is locked*.
- A juvenile placed in an *unlocked* room within the larger *secure perimeter* of an adult jail or lockup or a juvenile detention center.
- A juvenile placed in an adult jail in a non-secure conference room that contains a cuffing rail, ring, or other construction feature designated, set aside, or used to securely detain individuals.

³ This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of and “approved supervised automatic fire detection system or approved supervised automatic sprinkler system.”

- A juvenile left in a secure booking area after being photographed and fingerprinted.
- A juvenile being processed in a secure booking area where a non-secure booking area is available within a facility.
- A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
- A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.
- A juvenile placed in an unlocked room designed or intended to be used for residential purposes.

In cases when a criminal-type offender is securely detained, pending release or transfer, all of the following requirements must be satisfied:

1. The secured area is sight and sound separated from incarcerated adults including trustees.
2. There may be no adult prisoners in the booking area when juveniles are present.
3. The following information must be recorded on all juveniles held in a secure environment:
 - Name and ID number
 - Sex
 - Race
 - Most serious offense⁴
 - Jurisdiction (i.e., Youth Court Judicial District, Department of Corrections, District Court Judicial District, Federal Court (INS, BIA), Tribal Court and Tribe, Out of State Court, etc.)
 - Date and time the juvenile is placed in a secure area
 - Date and time the juvenile is released from the secure area
 - Location where the juvenile is detained
 - Name of person to whom the youth was released
 - Capacity of person to whom the youth was released. (i.e., parent, probation officer, transportation officer, etc.)
 - If youth transferred to another facility/agency: name, type and location of facility/agency (i.e., Martin Hall, juvenile detention facility, Medical Lake, WA; Margaret Stuart Home, shelter care facility, Helena, MT; Rivendell, residential treatment facility, Butte, MT; etc.)
 - Date and time of probable cause hearing, if youth securely held beyond six hours

⁴ A rule of thumb is that offenses are classified from the least serious to the most serious as: non-offense, status offense, criminal-type offense, and criminally filed offense; within the criminal-type offense and criminally filed offenses a crime against a person is more serious than a crime against property. If a youth committed a criminal offense that resulted in a charge of criminal contempt or violation of a condition of probation, list the criminal offense. If not, then list the most serious offense from the original case.

- If petition direct filed in District Court per MCA 41-5-206, date and time of transfer hearing
- Date and time of adjudication, if any
- Date and time of any other court appearance, if any
- Whether youth was maintained sight and sound separate from adult offenders, including trustees.
- Note of any extenuating circumstances (i.e., youth are usually not securely held, but local juvenile detention facility was full and storm and/or time or distance prevented transporting to a juvenile detention facility in another community within the six hour limit, no other option available to maintain community safety, etc.)

Reporting Requirements:

To demonstrate compliance with the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended and the Youth Court Act, all adult jails must report **monthly** to Montana Board of Crime Control (MBCC) on the Juvenile Detention Reporting System (JDRS)⁵ the following:

1. Dates covered by the reporting period
2. Whether the facility held any juveniles in a secure custody status during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.
3. All information required to be kept on youth held in secure custody and requested by the JDRS program.

On-site Monitoring:

The Youth Court Act provides MBCC rulemaking authority to carry out and monitor compliance with the provisions of the Youth Court Act and the Juvenile Justice and Delinquency Prevention Act, as Amended. During on-site visits, monitors expect to view relevant records and court documents for all youth securely held for any length of time at the facility, tour the facility and interview staff about policies and procedures. Monitors will carry appropriate documentation to identify them as representatives of MBCC.

Failure to comply with the provisions of either Act can result in the loss of federal and state grant funds to the county as well as increased liability.

⁵ MBCC has developed a Windows based database program called the Juvenile Detention Reporting System (JDRS) for reporting purposes. It will be provided at no charge to any law enforcement facility requesting it. To report to MBCC and obtain information about the JDRS database program contact:

Cil Robinson, Juvenile Justice Planner
 MBCC
 PO Box 201408
 Helena, MT 59620-1408

Procedures for All Adult Jails:

Status and Non-Offenders

1. Status offenders⁶ are defined as juveniles who have been accused or charged with conduct that would not be an offense if committed by an adult. Status offenses include: runaway, truancy, underage possession or consumption of alcohol or tobacco, and curfew violations. *Under federal regulations, status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to criminal-type status on criminal contempt charges for their failure to appear, violation of informal probation, or commission of multiple status offenses.* A non-offender⁷ is a juvenile who is not charged with an offense and/or is an abused or neglected child.
2. Status and non-offenders shall not be placed in secure custody under any circumstances. Status offenders may be cuffed to themselves, but not to a cuffing rail or other stationary object.
3. Status and non-offenders shall be placed in a non-secure area until release or transfer arrangements can be made. They may not be placed in any room that has a lock on the door that cannot also be opened from the inside without a key.
4. The officer shall notify parents, legal guardians, responsible person or agency for notification and release. If a responsible adult cannot be located, the person/agency responsible for juvenile intake/assessment shall be contacted.
5. Status offenders may be processed in a secured booking area provided that: (1) there are no incarcerated adults present and (2) status offenders are removed immediately following the booking process. If youth must pass areas where adult offenders are incarcerated to access the booking area, doors to the area where adults are held must be closed and windows covered to maintain sight and sound separation.

Civil-Type Offender⁸

1. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic⁹ violations and noncriminal fish and game violations.
2. A civil-type offender, like a status and non-offender, may not be placed in secure custody under any circumstances. (Reference specific procedures for handling status and non-offenders.)

⁶ Status offenders are equivalent to the state definition of a "youth in need of intervention" as defined in MCA 41-5-101(50).

⁷ A non-offender is equivalent to the state definition of a "youth in need of care as defined in MCA

⁸ Civil-type offenders are equivalent to the state definition of a "youth in need of intervention" as defined in MCA 41-5-101(50).

⁹ In Montana, all youth taken into custody are under the jurisdiction of the Youth District Court, however, District Court does not have concurrent jurisdiction for traffic offenses, even if they are criminal. Therefore, secure detention of youth for a traffic offense of any kind is a violation of the Youth Court Act.

MSA Procedures applicable to Jails:

- 1. In a Metropolitan Statistical Area (MSA) (As of 4/25/2002 Montana MSA's were Billings, Great Falls, and Missoula) or**
- 2. In non-MSA's that have alternative facilities/options available within the community for placement of youth (MCA 41-5-349(3)(b))**

Criminal-type offender

1. A criminal-type offender is a juvenile charged or adjudicated with an act that, if done by an adult would constitute the commission of a crime. Under federal regulations, status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to criminal-type status for their failure to appear, violation of probation or commission of multiple status offenses. An exception is if the offense committed that resulted in the charge of probation violation was a criminal offense *other than criminal contempt*. Juvenile offenders whose petition was direct filed in District Court in accordance with 41-4-206 but have not had the transfer hearing, or whose case remained in Youth Court after the transfer hearing are considered criminal-type offenders. It is the preference of this agency to detain criminal-type offenders non-securely while in custody. Exceptions include violent or combative juveniles who cannot be subdued and pose a threat to the officer, themselves, or the public.
2. The officer shall notify parents, legal guardians, responsible person or agency after taking the juvenile into custody for notification and release or, if a responsible adult cannot be located, the person/agency responsible for juvenile intake/assessment shall be contacted.
3. Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention¹⁰. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in one of the following facilities and approved by the youth court:
 - A. in a short term detention center;
 - B. a youth detention facility, including a regional detention facility;
 - C. or a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the Department of Corrections.
4. Accused criminal-type youth may be temporarily placed in secure custody, in quarters with sight and sound separation from incarcerated adults for up to 6 hours from the time they enter a secure custody status, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility.

¹⁰Reference sample "Juvenile Incarceration Assessment" Form

5. The six-hour holding time limit is for processing and release and never to be used as a punitive measure. The clock will begin when the juvenile enters a secure setting, and once the clock starts, it cannot be turned off, even if the juvenile is removed from the locked setting.
6. Adjudicated criminal-type offenders may not be placed in secure custody in a jail or other adult detention facility.

Criminal Offender

1. A criminal offender is a juvenile offender whose case is filed in the district court which has criminal jurisdiction and remains in the district court after the transfer hearing as provided in MCA 41-5-206.
2. Accused criminal offenders may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

Violations:

1. Violations of either the JJDP Act or the Youth Court Act occur under any of the following circumstances:
 - A. A juvenile status, civil or non-offender is placed in a secure room or cell or is cuffed to a stationary object.
 - B. A juvenile and an incarcerated adult occupy the booking area at the same time.
 - C. An accused juvenile criminal-type offender is held over 6 hours from the time they enter a secure custody status.
 - D. An adjudicated juvenile criminal-type offender is securely held for any period of time.
 - E. A juvenile in secure custody status, other than one adjudicated as a criminal offender in Adult District Court, has any physical or sustained sight or sound contact with an incarcerated adult.
 - F. A juvenile is securely held for six hours or less for punitive reasons.

Procedures Applicable to Jails in non-MSA's with no alternative facilities/options available for placement of youth:

Criminal-type offenders

1. A criminal-type offender is a juvenile charged or adjudicated with an act, which, if done by an adult would constitute the commission of a crime. Juvenile offenders whose petition was direct filed in District Court in accordance with 41-4-206 but have not had the transfer hearing, or whose case remained in Youth Court after the transfer hearing are considered criminal-type offenders. Under federal regulations, status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to a criminal-type offender for their failure to appear, violation of probation or commission of multiple status offenses. An exception is that if the offense committed that resulted in the charge of probation violation was a criminal offense *other than criminal contempt*.
2. It is the preference of this department to detain criminal-type offenders non-securely while in custody. Exceptions include violent or combative juveniles who cannot be subdued and pose a threat to the officer, themselves, or the public.
3. The officer shall notify parents, legal guardians, responsible person or agency after taking the juvenile into custody for notification and release or, if a responsible adult cannot be located, the person/agency responsible for juvenile intake/assessment shall be contacted.
4. Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention¹¹. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in one of the following facilities and approved by the youth court:
 - A. in a short term detention center;
 - B. a youth detention facility, including a regional detention facility;
 - C. or a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the Department of Corrections.
5. Accused criminal-type youth offenders may be temporarily placed in secure custody, in quarters with sight and sound separation from incarcerated adults for up to 24 hours excluding weekends and holidays, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility.
6. The 24 hour, exclusive of weekends and holidays, holding limit is for processing and release and never to be used as a punitive measure. The clock begins when the juvenile enters a secure setting and once the clock starts it cannot be turned off, even if the juvenile is removed from the locked setting.

¹¹Reference sample "Juvenile Incarceration Assessment" Form

7. Adjudicated criminal-type youth may not be placed in secure custody in a jail or other adult detention facility.

Criminal Offender

1. A criminal offender is a juvenile offender whose case is filed in the district court which has criminal jurisdiction and remains in the district court after the transfer hearing as provided in MCA 41-5-206.
2. Accused criminal offenders may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

Violations:

1. Violations of either the JJDP Act or the Youth Court Act occur under any of the following circumstances:
 - A. A juvenile status, civil or non-offender is placed in a secure room or cell or is cuffed to a stationary object.
 - B. A juvenile and an incarcerated adult occupy the booking area at the same time.
 - C. An accused criminal-type offender is securely held over 24 hours, excluding weekends and holidays, from the time they enter a secure custody status, or immediately before or after a court appearance.
 - D. An adjudicated criminal-type offender is securely held for any period of time.
 - E. A juvenile in secure custody status, other than one adjudicated as a criminal offender in Adult District Court, has any physical or sustained sight or sound contact with an incarcerated adult.
 - F. A juvenile accused of a criminal-type offense is held for more than six hours and released without a probable cause hearing.

Juvenile Incarceration Assessment			
Date		Time	
Name of Juvenile			
Arresting Officer			
Shift Supervisor			

Please answer each of the questions below by placing your initials in the appropriate Yes or No box. **Any No indicates that secure custody is not an option for resolving this incident.**

ASSESSMENT CRITERIA		YES	NO
1	Is there probable cause to believe that the youth has committed a crime?		
2	If the youth is being held for contempt or probation violation, was the offense in the original case or the violation a criminal offense?		
3	Does the nature of the criminal offense require the secure custody of this youth?		
4	Does the youth present public safety or non-appearance concerns?		
5	Does the information of the crime present cause why the youth should not be released to a parent, guardian, or other care giver in lieu of incarceration?		
6	Has a "Notice to Appear and Complaint Form" pertaining to the criminal offense charged against the youth been completed?		
7	Has the parent, guardian or another responsible family member been contacted and informed of the incarceration of this juvenile?		
Contact Information			
A	Name of parent, guardian, or other responsible family member contacted.		
B	Manner in which contact made. (In person, phone, written notice, etc.)		
C	Name of Juvenile Probation Officer (JPO) contacted		
D	Date and Time JPO contacted.		
E	Name of officer or staff who contacted JPO		
Signatures			
Arresting Officer			
Shift Supervisor			
Transporting Officer			